

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERIK SPITZBARTH,

Plaintiff,

v.

CACH, LLC,

Defendant.

Case No. 12-cv-2885-L(JMA)

**ORDER GRANTING MOTION FOR
LEAVE TO PROCEED *IN FORMA*
PAUPERIS [DOC. 2]**

On December 4, 2012, Plaintiff Erik Spitzbarth commenced this action against Defendant CACH, LLC for alleged violations of the Federal Fair Debt Collection Practices Act, the California Rosenthal Fair Debt Collection Practices Act, and the California Business and Professions Code § 17200. On the same day, he filed a motion seeking leave to proceed *in forma pauperis* (“IFP”). (Doc. 2.) For the reasons outlined below, the Court **GRANTS** Plaintiff’s IFP motion.

The determination of indigency falls within the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on other grounds*, 506 U.S. 194 (1993) (holding that “Section 1915 typically requires the reviewing court to exercise its sound discretion in determining whether the affiant has satisfied the statute’s requirement of indigency”). It is well-settled that a party need not be completely destitute to proceed *in forma*

1 *pauperis*. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). To satisfy
 2 the requirements of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient which states that
 3 one cannot because of his poverty pay or give security for costs . . . and still be able to provide
 4 himself and dependents with the necessities of life.” *Id.* at 339. At the same time, however, “the
 5 same even-handed care must be employed to assure that federal funds are not squandered to
 6 underwrite, at public expense, . . . the remonstrances of a suitor who is financially able, in whole
 7 or in material part, to pull his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I.
 8 1984).

9 District courts, therefore, tend to reject IFP applications where the applicant can pay the
 10 filing fee with acceptable sacrifice to other expenses. *See, e.g., Stehouwer v. Hennessey*, 841 F.
 11 Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on other grounds, Olivares v. Marshall*, 59
 12 F.3d 109 (9th Cir. 1995) (finding that a district court did not abuse its discretion in requiring a
 13 partial fee payment from a prisoner who had a \$14.61 monthly salary and who received \$110
 14 per month from family). Moreover, “*in forma pauperis* status may be acquired and lost during
 15 the course of litigation.” *Wilson v. Dir. of Div. of Adult Insts.*, 2009 WL 311150, at *2 (E.D.
 16 Cal. Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at 321); *see also Allen v. Kelly*, 1995 WL
 17 396860, at *2 (N.D. Cal. June 29, 1995) (holding that a plaintiff who was initially permitted to
 18 proceed *in forma pauperis* should be required to pay his \$120 filing fee out of a \$900
 19 settlement). In addition, the facts as to the affiant’s poverty must be stated “with some
 20 particularity, definiteness, and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th
 21 Cir. 1981).

22 Having read and considered Plaintiff’s application, the Court finds that Plaintiff meets the
 23 requirements in 28 U.S.C. § 1915 for IFP status. Plaintiff is unemployed and currently receiving
 24 \$750.00 monthly in unemployment benefits. (IFP Mot. at ¶ 3 [Doc. 2].) Plaintiff also lists
 25 “Family Support” as another source of income but there are “no specific monthly amounts
 26 [recieved].” (*Id.*) No other sources of income are listed. He also owns a 2000 Ford Ranger
 27 Pickup, which is the only asset listed. (*Id.* ¶ 5.) Plaintiff’s expenses include \$870 for rent, \$100
 28 for utilities, and \$60 for gas. (*Id.* ¶ 6.) He also has “[s]everal thousand dollars of credit card

1 debt.” (*Id.* ¶ 8.) Plaintiff’s expenses alone are clearly greater than his current sources of income.
2 Consequently, the Court finds that requiring Plaintiff to pay the court filing fees would impair
3 his ability to obtain the necessities of life. *Adkins*, 335 U.S. at 339.

4 Accordingly, the Court **GRANTS** Plaintiff’s application to proceed *in forma pauperis*.
5 (Doc. 2.) However, if it appears at any time in the future that Plaintiff’s financial picture has
6 improved for any reason, the Court will direct Plaintiff to pay the filing fee to the Clerk of the
7 Court. **This includes any recovery Plaintiff may realize from this suit or others, and any**
8 **assistance Plaintiff may receive from family or the government.**

9 **IT IS SO ORDERED.**

10
11 DATED: December 6, 2011

12 
13 M. James Lorenz
14 United States District Court Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28